



Code of Practice for Residential Buying Agents

Effective from 1 January 2014

This Code of Practice is to be applied by all TPO Members offering property buying services. TPO Members must display the above logo within their offices (as appropriate); and must make copies of the Consumer Guide available to the public. TPO Members must also have available, free of charge, copies of this Code of Practice to give to consumers on request and a notice to this effect must be displayed with the Consumer Guides.

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All references to the masculine include the feminine, and to the singular include the plural. Terms marked (*) - the first time they appear are defined in a Glossary of Terms at Section 13.

1. General Provisions

Applicability

- 1a This Code applies to estate agency services (*) in the United Kingdom provided by a person or organisation who has agreed or is required to comply with it for the buying of residential property (*).

General Obligations

- 1b You (*) must comply with this Code of Practice. You must comply with all laws relating to residential estate agency such as The Estate Agents Act 1979 and all secondary legislation: The Property Misdescriptions Act 1991 and all secondary legislation; Data Protection Act 1998, Unfair Terms in Consumer Contract Regulations 1999, The Housing Act 2004 and all secondary legislation, The Consumers, Estate Agents and Redress Act 2007, Consumer Protection from Unfair Trading Regulations 2008, Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008, Money Laundering Regulations 2007 and all other current and relevant legislation.
- 1c You must ensure that all staff are fully conversant with all aspects of this Code of Practice and their legal responsibilities. Such staff must observe this Code and their legal responsibilities in all their dealings with consumers. Staff must have a good working knowledge of the law of agency, the law of contract, and all relevant estate agency legislation; in Scotland, Home Report legislation; and familiarity with the basic conveyancing and mortgage application processes.
- 1d You should provide a service consistent with fairness, integrity and best practice; and you should not seek business by methods that are oppressive or involve dishonesty, deceit, misrepresentation or harassment (*).
- 1e You must offer equality of professional service to any person regardless of their race, religious belief, gender, sexuality, age, disability or nationality. You must not be involved in any plan or arrangement to discriminate against a person or people because of their race, religious belief, gender, sexuality, age, disability or nationality.
- 1f You should take special care when dealing with consumers who might be disadvantaged because of their age, infirmity, lack of knowledge, lack of linguistic ability, economic circumstances or bereavement; and you must avoid any course of action that can be construed as harassment.
- 1g You must not release or misuse confidential information given by your client (*) during the process of selling or buying a property (*) without your client's permission unless legally required to do so.
- 1h You must keep clear and full written (*) records (*) of all transactions for a period of 6 years and produce them when required by the Ombudsman.
- 1i As a TPO Member you must not take, or be involved in any action which would bring the scheme into disrepute.

Publicity

- 1j You must use and display such material promoting the Code of Practice as provided by TPO. You should prominently display the TPO logo on the window of any offices, and on relevant documentation such as marketing literature, advertisements, and on your letterheads.

- 1k You must have available, free of charge, copies of this Code of Practice to give to consumers on request. You must also prominently display copies of the Consumer Guide leaflet in any offices.

2. Instructions

- 2a You must clarify the instructions received from your client and clearly outline the service that you will provide, explaining that you will in good faith and based upon the criteria supplied to you by your client, select a number of properties from those available and present such properties to your client for their consideration. You must clearly explain the limits to such instructions; in particular that you will not offer financial advice in connection with the purchase and that you have not carried out a survey on the subject properties or the facilities they provide.

3. Terms of Business, Commission and Termination

Instruction

- 3a You must, at the point of instruction, inform your client in writing (*) that you are a Member (*) of the TPO scheme, and subscribe to this Code of Practice.
- 3b You must not directly or indirectly harass (*) any person in order to gain instructions. Nor must you repeatedly try to gain instructions in a way likely to cause offence.
- 3c You must not instruct other agencies to assist you in buying a property without your client's permission. If the client gives permission, as the instructing agent, you are liable at law for the actions of the sub-instructed agent and will be held responsible for any failures to comply with this Code of Practice by that sub-instructed agent even if that sub-agent is not a TPO Member.
- 3d Notwithstanding 3c above if you are instructed as a sub-agent, you must continue to act in accordance with all relevant provisions of this Code of Practice.
- 3e You must give your client written confirmation of his instruction for you to act in the buying of property on his behalf. You must by law give the client written details of your Terms of Business including your fees and charges before he is committed or has any liability towards you.

Fair Contracts

- 3f Your Terms of Business and your contract must be consistent with the provisions of this Code of Practice and comply with the Unfair Terms in Consumer Contracts Regulations 1999 (as amended).
- 3g Your Terms of Business should be written in plain and intelligible language.

Fees and Charges

- 3h All fees and additional costs, including the retainer payable, must be included in your Terms of Business. They must be fully explained, and clearly and unambiguously stated in writing.
- 3i Where the fee is a percentage of the purchase price you should clearly state whether VAT is chargeable and must express it as an actual amount including VAT. The example amount should be based on the client's purchase budget. However, you must make it clear that, should the buying price be higher or lower than the asking price, your commission fee will be correspondingly higher or lower.
- 3j Where you charge a fixed fee you should state the actual amount payable including VAT in the contract and ensure that your client understands that the fee will not vary whatever the purchase price.

- 3k Except for any previously agreed additional costs, commission fees will become due and payable on exchange of contracts (in Scotland, conclusion of missives).
- 3l If you intend to charge the client a fee or recover costs for terminating the instruction, you must make this clear and specify the amount of the fee or the method of calculation and additional costs and their purpose.

Duration and Termination

- 3m Your Terms of Business must clearly state the minimum duration of your instruction, and how it can be terminated by either party. When a contract is signed by a client during a visit by you to his home or his place of work or away from your premises, then he must be given a right to cancel that contract within 7 days of signing in accordance with the Cancellation of Contracts etc Regulations 2008. He should be given a 'Notice of Right to Cancel'. Where you intend to recover costs incurred during this cancellation period you must obtain the client's agreement in writing to those costs. Where the client wishes the contract to begin before the end of the 7 day cancellation period you must obtain that request in writing.
- 3n On receipt of the client's instruction, or on your own decision, to terminate your instruction, you must promptly give him written confirmation that you are no longer acting for him, confirm the actual date of termination, and give details of any fees or additional costs the client owes you (see 3r below).
- 3p Your contract must allow for the required notice of termination to be given before the end of any term, such that termination by the client can occur at the expiry of the minimum term.

Fee Entitlement and Client Liability

- 3q At the time of accepting instructions from a client, you must point out and explain clearly to that client in your written Terms of Business:
- that you may be entitled to a commission fee if that client terminates your instruction and goes on to exchange contracts on a property the details of which you previously provided to your client through another agent within 12 months of the date your instruction ended.

If no other estate agent is involved this time limit extends to 2 years.

- and that the client may be liable to pay more than one fee if:
 - o that client has previously instructed another buying agent to find a property on their instructions and been introduced to the same property; or
 - o that client instructs another buying agent to find a property on their instructions during the period of your agency.
- 3r At the time of the termination of the instruction, you must explain clearly in writing any continuing liability the client may have to pay you a commission fee and any circumstances in which he may otherwise have to pay more than one commission fee.
- 3s Your action in pursuing a commission fee or additional charges must be proportionate and reasonable and not intimidatory.

Signing

- 3t You must explain your Terms of Business before the client is asked to sign and be given a copy to retain. The client must be given sufficient time to read them before agreeing to instruct you (refer also to paragraph 3m above).

Subsequent Changes

3u Any subsequent changes to the Terms of Business must be:

- Mutually agreed by you and your client.
- Promptly confirmed in writing.
- Where appropriate, contained in a new Terms of Business signed and dated by your client.

4. Advising your Client

4a You must by law comply with the Consumer Protection from Unfair Trading Regulations 2008. The Regulations require you to disclose any information of which you are aware or become aware in relation to the property in a clear, intelligible and timely fashion.

4b All advertisements must be legal, decent, honest and truthful in accordance with the British Codes of Advertising and Sales Promotion and Direct Marketing.

Advertising for New Business (Canvassing)

4c You must not use unfair methods when seeking new clients by unsolicited approaches. Any canvassing material must be truthful and must fully explain who the message is from, its purposes and how the client's interest can be followed up.

4d If as a result of an unsolicited approach a client is interested in using your services, you must draw to their attention and explain before they are committed to another contract the potential of paying fees to more than one agent where another agent has been previously instructed in connection with the purchase of a property.

5. Offers

5a When you give advice to someone buying a property, you must make clear that any figure you advise be put forward as an offer is given in good faith but is not based upon your formal valuation of the property. You must never deliberately misrepresent the value of a property.

5b You should keep a written or electronic contemporaneous record of all offers you make on behalf of your client including the date and time of such offers and the seller's (or his appointed representative's) response.

5c By law you must not discriminate, or threaten to discriminate, against a prospective client because that person declines to accept that you will (directly or indirectly) provide related services to them. Discrimination includes but is not limited to the following:

- Failing to tell the seller (or his appointed representative) of an offer to buy the property.
- Making it a condition that the person wanting to buy the property must use any other service provided by you or anyone else.

In Scotland (in addition to 5a – 5c)

5d If you have received a Note of Interest (either orally or in writing) from your client intending to make an offer, you must:

- According to your clients instructions tell the seller (or his appointed representative) about the Note of Interest and confirm the details in writing, whenever this is practicable.
- Do everything reasonably possible to tell your client intending to make an offer about any formal closing date for offers.

6. Financial Evaluation

6a You should assist the selling agent by obtaining reasonable information required by the seller.

7. Duty of Care and Conflict of Interest

7a When instructed in connection with the purchase of a property, your duty of care is to the client. You must offer suitable advice to meet the client's aims and needs. Where the law and the interests of the client conflicts, adherence to the law must prevail.

7b You must avoid a conflict of interest. You must disclose at the earliest opportunity in writing to your client or any relevant third party any existing conflict of interest, or any circumstances which might give rise to a conflict of interest.

7c If you intend to offer potential clients surveying, financial, investment, insurance, conveyancing or other services or those of an associate (*) or connected person (*), you must by law advise your clients either separately in writing or within your Terms of Business.

8. Between Acceptance and Exchange of Contracts

8a Your obligations to the client are:

- to monitor progress;
- to assist where possible, as asked;
- to report information deemed helpful to bringing the transaction to fruition.

You must keep written or electronic records of such activity.

8b If your client becomes involved in a contract race, he should be told promptly of the situation and given such information which comes to your attention.

9. In-house Complaints Handling

9a You must maintain and operate an in-house complaints procedure. Such procedures must be in writing; explain how to complain to your business and to the Ombudsman; be readily available in any office for consumers; and be available for inspection by the Ombudsman and/or TPO Limited.

9b All verbal and written complaints must be recorded by you at the time they are made.

9c You must agree to deal with any properly appointed representative of a Complainant (*).

9d All written complaints must be acknowledged in writing within 3 working days and a proper investigation promptly undertaken. A formal written outcome of your investigation must be sent to the Complainant within 15 working days. A senior member of staff not directly involved in the transaction should deal with the complaint where that is possible.

9e If the Complainant remains dissatisfied, he must be told how he can further pursue his complaint within your business. This should provide the opportunity for a speedy, separate and detached review of the complaint by staff not directly involved in the transaction where that is possible. Such a review must be sent to the Complainant within 15 working days.

9f Following the conclusion of your investigation, a written statement of your final view, and including any offer made, must be sent to the Complainant. This letter must also tell the Complainant how the matter can be referred to the Ombudsman, pointing out that any such referral by the Complainant must be made within 6 months of your final view.

9g You must not imply that payment of any outstanding commission fee or additional costs is a pre-condition of a review by the Ombudsman.

10. Referrals to the Ombudsman

- 10a You must co-operate with any investigations by the Ombudsman being conducted in accordance with his Terms of Reference.
- 10b You must:
- comply with any award and/or direction made by the Ombudsman against you and accepted by the Complainant and which is binding upon you under the Terms of Reference; and
 - pay the Complainant the amount of any such award if accepted by the Complainant within the period for payment required by the Ombudsman.

11. Compliance Monitoring

- 11a You must comply with the requirements of any code compliance monitoring procedure used by TPO Limited.
- 11b You must seek consumers' permission for their contact details to be used in any monitoring process to ensure compliance with the Data Protection Act.

12. Non-Compliance with the Code

- 12a Cases of non-compliance will be dealt with by the Disciplinary and Standards Committee (DSC) of the TPO Council.
- 12b The DSC will consider those cases brought to its attention by the Ombudsman, acting within his Terms of Reference, where he considers there has been any single flagrant breach and/or any persistent breaches of the Code by any Member Agent. When considering such cases the DSC will also consider whether the conduct is such that it raises issues concerning the Member's continuing registration under the Consumers, Estate Agents and Redress Act (CEARA) 2007.
- 12c The DSC will also consider cases of non-compliance where the monitoring process at 11 above shows any single flagrant breach and/or any persistent breaches of the Code, failure to complete monitoring or where it is considered that the Member has brought the scheme into disrepute.
- 12d In these cases above, the DSC could issue:
- An informal warning.
 - A formal warning.
 - A notice of dismissal from TPO Limited in writing.
 - Levy a fine.
- 12e Any Member issued with a warning or sanction has the right to make a representation to the DSC and after the final decision by that body shall, if necessary, have the right to put the matter before an Appeals Committee made up of two independent Council members (one of whom will act as Chair) and one Board member. Such appeal must be made within 4 weeks of the issue of the warning or sanction. Expulsion or suspension from the TPO voluntary scheme will not necessarily result in loss of Consumers, Estate Agents and Redress Act registration.

13. Glossary of Terms

In this Code, the following interpretations and definitions apply:

- 13a **Associate.** Includes a brother, sister, husband, wife, civil partner, aunt, uncle, nephew, niece, parents, grandparents, children and grandchildren. The definition also includes business associates.

- 13b **Client.** A person who has instructed you, for a fee, to buy, a property on his or her behalf, in the United Kingdom (excluding the Channel Islands and the Isle of Man). Where appropriate, this definition includes a client's properly appointed representative.
- 13c **Complainant.** Someone who is an actual or potential seller or buyer of residential property making a complaint against a Member Agent. Where appropriate, this definition includes a Complainant's properly appointed representative.
- 13d **Connected Person.** Includes:
- Your employer or principal.
 - Your employee or agent.
 - Any associate including the term "business associate" as defined within Sections 31 and 32 of the Estate Agents Act 1979.
- 13e **Estate Agency Services.** Any things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from a Consumer (the "client") who wishes to sell or buy any residential property in the United Kingdom:
- for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to buy or, as the case may be, sell such residential property; and
 - after such an introduction has been effected in the course of that business, for the purpose of securing the sale or, as the case may be, the purchase of that property.
- 13f **Harass/Harassment.** Means to act in a threatening or oppressive manner likely to cause alarm, annoyance and/or distress.
- 13g **Member.** A buying agent who is a Member of the TPO voluntary scheme and who has undertaken to abide by all provisions of the Code of Practice.
- 13h **Property or Residential Property.** Means property (land and/or buildings) used, last used, or to be used for residential purposes.
- 13i **Records.** Means all written correspondence, file notes, contracts and agreements in hard copy or electronic communications including emails or faxes.
- 13j **Written, in Writing.** Includes typed or hand-written letters, records or notes, emails and faxes.
- 13k **You.** Applies to all those Buying Agents bound by this Code, and their staff providing estate agency services

The Property Ombudsman

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